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JUDGE DE BOLT SAYS J. K. SUMNER HAS BEEN PLUNDERED

(Continued from Page 1.)

trial which has been replete with intensely sensational episodes, and a day which was marked with the exchange of bitter personalities by counsel in the case.

An appeal from the order of the court was noted by Judge Humphreys on behalf of the Ellis heirs, but it is claimed on behalf of Sumner that no appeal lies from the order, as the niece and nephews have no interest in the money. In any event, even though there be an appeal the Ellises would have to furnish a bond of at least the amount of the fund in court, in order to prevent Sumner from withdrawing the \$48,000.

The remarks of the court anent the counsel fees struck home, and there was a hasty disclaimer from all sides of any wrongful intent, but Judge De Bolt stood firm, despite Humphreys' bitter assertion that his statement of facts if true was sufficient for the disbarment of all the attorneys in the case. Sumner was not visibly affected by the order of the court which gave him his own again. He was amused by the remarks of counsel during the day, but was worn out and tired by six o'clock, — the hour which was reached before the conclusion of the case. He accepted the congratulations of friends however with a joyful smile and was evidently much pleased at the outcome of the suit. He will probably go to Tahiti as soon as he comes into actual possession of the money.

DAVIS AND HUMPHREYS.

Davis and Humphreys did not mince matters or stop for want of an elegant word in their references to each other at the argument yesterday. Davis opened and paid more attention to Humphreys than to the law points involved. He charged that the attorneys on the other side were guilty of conspiracy, fraud and blackmail, and not he, as had been alleged in the answer of the Ellises. He claimed that the Ellises had received \$30,000 from the old man, and came into court with dirty hands and were not entitled to equity.

He argued also that Humphreys had been attorney for both Sumner and the Ellises and had no right to appear in court. "Why the charge of conspiracy and blackmail made against me, makes my hair rise on end," said Davis growing excited. "I have been practicing law for twenty-two years and I haven't got much of these ill-gotten gains; I have no desire to tread the path of the criminal, conspirator or blackmailer." Davis created a general laugh during the argument, when on an interruption by Magoon he referred to him "as the learned counsel who erected a pig pen next to my lot."

Peters followed Davis, also for Sumner, and he confined himself almost altogether to the law points involved, contending that the trust deed was revocable. Then Humphreys opened up his batteries in reply to Davis, com-

pletely ignoring Magoon. He said he had a contempt too profound for utterance, for a man who would sign his name to a charge involving the assassination of the character of a brother attorney, and then withdraw it, so that he is not given a chance to defend his reputation. He also referred to Davis as a "bloodhound on the scent of money" — "which foul and dirty and unholy purpose inspired this gentleman to bring the guardianship proceedings." He charged also that Davis and Magoon had both appeared against Sumner in the guardianship proceedings and now posed as his friends.

Humphreys said he had heard considerable criticism about the admission of attorneys to practice in the district court, but never understood how "a steam roller" was admitted to practice, referring also to Davis.

Once when Humphreys spoke of "this man Davis" the attorney objected and replied by a reference to "this ex-impeached judge." Judge De Bolt censured the attorneys for their use of personalities and cautioned Magoon and Davis not to interrupt Mr. Humphreys. Towards the close of his argument, Humphreys sat down and said he would not finish because of a whispered conversation between opposing counsel, which he characterized as discourteous. The court said that it was discourteous, but hardly more so than for Humphreys to leave the court-room while counsel were arguing on the other side. Humphreys would not go on, however, and the argument was closed forthwith.

Judge De Bolt announced that he would give his decision immediately, although he might write a lengthy opinion he deemed this unnecessary, as what was wanted was simply a decision, and he would not therefore attempt to analyze the evidence. Omitting the reference to authorities and quotations from the papers in the case the court's decision was in substance as follows:

"This is a suit brought by Gulstan F. Ropert against John K. Sumner, Victoria Buffandeau, Wm. S. Ellis, John S. Ellis, Maria S. Davis, R. W. Davis and Bishop & Co. to terminate a trust. The petitioner sets forth the fact of the execution of the trust deed, and also that he entered upon its execution and performed the duties. He also sets forth the sale of the property to the Oahu Railway & Land Co. and the distribution of the proceeds thereof; also the visit to the Catholic Mission by John K. Sumner and Mr. Magoon and the payment of \$48,025. The Bishop further prays for relief and asks that his resignation be accepted, which has already been done, and that he be released from liability which has also been done, as it was stipulated that the \$48,025 be taken and accepted by all parties to be a full and correct accounting of all the money in his hands."

"The answer of John K. Sumner practically admits all of the allegations in the complaint excepting paragraph six which contains the gist of the whole case. The prayer of John K. Sumner asks also for affirmative relief and that the \$48,025 be paid over to him, also

that the trustee be discharged and the deed cancelled.

"The prayer of Victoria Buffandeau, John S. Ellis and William S. Ellis practically joins in the prayer of the petitioner, and I find as a matter of fact the alleged deed of trust was executed in the manner and under the circumstances as set forth in pages two and three of the answer of the Ellises, defendants." (This portion of the answer was read. It set out the first proceedings by Maria Davis to have the old man put under guardianship, and the subsequent pro forma decree of the Supreme Court declaring him sane.)

"While it is true that under the decision and decree of the Supreme Court John K. Sumner was a sane person, and that he stands before the court today as a sane man, yet the peculiar circumstances surrounding the execution of the deed are such that it could not be considered a voluntary act, and it seems that there was some question as to his sanity."

"While the Supreme Court did enter up a pro forma decree saying the old man was sane, yet there is still some question as to his mental capacity. There was no evidence introduced to show that the old man's attention was called to the provisions of the deed or that he was told it was irrevocable. It seems to me to be very clear that the deed is revocable; the facts and circumstances disclosed by the evidence in this trial present a most remarkable case. Here is an old man, over eighty years of age, no wife or children, who owns valuable property, and who is also free of the claims of any other person upon him, and though he has near relations, I don't consider that they have a legal or even a moral claim to his property; we find him selling property for \$110,000 which is intimated is worth \$250,000, and he appears in court with the \$110,000 slipping away and vanishing excepting \$48,025."

"I will try and undertake to account for this: \$30,000 was paid to the Ellises, \$10,000 to Maria S. Davis, \$70,000 was paid to the various attorneys in the case, and it seemed absolutely immaterial who the attorneys worked for, John K. Sumner paid those who worked against him and those who worked for him, alike. Then there were \$1,000 paid to R. W. Cathcart, for which Cathcart says he worked for Sumner, and I judged from the tone of his testimony that he did not expect to receive any pay for it. Mr. Sumner says that all he did was to look over some accounts for him, and he paid him fifteen dollars for that; and \$10,000 to the Catholic church. This does not quite account for all the money, and the evidence is not quite clear as to what became of the remainder. On the other hand if this deed was not revoked by the acts of the old man, it seems established beyond question that there was an agreement between all parties concerned that it should be terminated, and that the Ellis children and Maria Davis entered into an arrangement by which the whole matter was settled. Some facts cannot be accounted for by express words, but 'actions speak louder than words,' in some instances. When this property was sold for \$110,000, all parties signed the deed though there was some hesitancy on the part of some about signing it. The testimony shows that Willie wanted \$15,000 and would not take \$10,000. Now if this was a gift outright, there would have been no discussion as to amount, for if it was a gift, Willie would not have asked for more. That is hardly common sense. But if they were entering into a bargain for the sale of their interests in this property there might have been some discussion. It looks as if there were negotiations between Sumner and Willie, that Sumner wanted to give \$10,000 while Willie asked \$15,000, though the evidence showed that he did finally agree and did accept \$10,000."

"Now it seems also that the Bishop understood that the trust was closed; if he considered that he was still trustee, he would have claimed possession of this money. But we find that Magoon and Sumner went to the church, where there was a meeting, and the Bishop went over his accounts, and found that the books showed a balance of \$48,025 for which he drew his check and handed to John K. Sumner. Why did the Bishop do that? Because he understood that the trust was terminated. He knew of these various transactions, — the sale of the land, and the distribution of the money to those who claimed an interest, and he probably understood that it was in full compensation of all alleged or supposed claims. Then he brings the will and deed out and delivers it to Mr. Sumner or Mr. Magoon, it is immaterial which, and the will is cancelled in writing in the presence of the Bishop. The evidence showed that the Bishop did not oppose, but countenanced and ratified this."

"Then there is the revocation in court. All the facts and circumstances point to the fact that the deed was revocable; it was testamentary in character, and the peculiar circumstances under which it was executed, show that if it was not revocable, then the action of all parties concerned has revoked it. The fact that it is revoked might be accounted for in a half a dozen different ways, and it is not necessary to rely simply on this statement of fact. "The deed on its face seems to have such language as to give the idea that it was intended only to give a power of attorney to the Bishop, and though he is called the trustee he was simply

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